

years. Customers in the LOTS program are also able to enjoy the discounted rate afforded by the Enhanced Lifeline Program.

Golden West modified its line extension policy last year to provide a means for new customers to obtain service by further reducing construction charges. Under the modified policy, the Company increased the distance for burying telephone cable to homes on non-permanent foundations from 750 feet to 1,650 feet, virtually eliminating, based on past construction records, the need for line extension agreements on the Reservation. Golden West will also go 1.3 miles to homes on permanent foundations before any line extension agreement is required. Further, when an extension agreement is required, the customer receives the entire amount back in the form of a \$15 per month credit applied to their bill.

In addition, Golden West has funded economic development programs to create jobs on the Reservation and thus improve general economic conditions. Golden West has funded economic development grants in the amount of \$200,000 annually for the past three years for communities within its service area. Golden West also provides \$15,000 grants to qualifying Tribes for economic development efforts on each of the three reservations it serves. In addition, the Cooperative contributed \$5,000 to the Lakota Fund, to further fund economic development activities on the Pine Ridge Reservation. The Company also has made thirty-five scholarships in the amount of \$1,000 each available to graduating seniors at schools within its service areas, seven of which are reservation schools including three on the Pine Ridge Reservation. Golden West also contributed \$10,000 to the Oglala Tornado Relief effort and received commendations from the Governor's office, FEMA, and other agencies for its quick response and cooperation during the aftermath of the tornado. Service interruption in the Oglala community was confined to only those homes destroyed by the tornado. Finally, Golden West participated in the

production of a video to entice prospective businesses to the Reservation entitled 'Connected for Growth.' The video highlighted Golden West's redundant broadband network and the funding and training resources available on the Reservation.

C. Western Wireless' Allegations Concerning Golden West's Rates and Service are Misleading and Wrong

Western Wireless alleges that its designation as an ETC is in the public interest because it will expand local calling areas, lower rates and improve customer service. An examination of Golden West's rates and service area, however, indicates that not only will Western Wireless' proposed service not achieve these goals as compared to Golden West, its service quality will be significantly inferior to Golden West's. On balance, therefore, Western Wireless' proposed service would not benefit consumers.

Golden West's local calling area extends well outside the boundaries of the reservation and provides Reservation residents with access to 65 communities in 27 telephone exchanges over a 23,275 square mile area. Thus, Golden West subscribers are able to access local county, Tribal and BIA government offices, Indian Health Service and other health care providers, schools and businesses without incurring toll charges. Although it is true that Golden West subscribers incur toll charges for calls to entities outside of the local calling area, Western Wireless' argument is misleading in light of Golden West's extremely large local calling area.²⁶

Golden West currently charges \$10.95 per month for local telephone service. With the assistance now available through the Enhanced Lifeline/Link-Up Program, Golden West is able, in many instances, to bring the customer's initial costs, including installation and a month's local service in advance, to approximately \$15.

Cooperative members, including those on the Reservation, also enjoy the financial benefits of belonging to a cooperative through each year's patronage capital credit retirement. Amounts returned to Cooperative members on the Pine Ridge Reservation in the past five years alone have totaled in excess of \$410,000. In 1998, Cooperative members, including those on the Reservation, received, in the form of a capital credit allocation, approximately 30 cents for every dollar spent on Golden West services. Thus, the net rate for residential service after the 1998 capital credit allocation was \$8.52.²⁷ This compares to Western Wireless' proposed rate of \$14.99 for monthly basic service.²⁸

Finally, the Western Wireless' wireless local loop telephone service would not improve the quality of local telephone service on the reservation and, in fact, it would actually be of a lesser quality than what Golden West is currently providing to the Reservation with its land-based wire service. As is common with wireless cellular telephone service, the wireless system transmit and receive signal quality is frequently inferior contributing to low quality "noisy" voice telephone service and limited data transfer speeds, as compared to the wireline DSL connection offered by Golden West.²⁹

Western Wireless' proposed service also draws into question its claim that designating Western Wireless as an ETC will promote rapid development of advanced services by Western Wireless and Golden West. As previously indicated, Golden West already is deploying

²⁶ It appears that the only difference between Golden West's local calling area and Western Wireless' proposed local calling area is that Western Wireless' customers will also be able to call Kadoka and Rapid City, South Dakota.

²⁷ This was derived based on the local service rate of \$10.95 minus the 30 percent capital credit discount of \$2.43, for a net rate of \$8.52.

²⁸ Western Wireless Petition at Appendix B.

²⁹ Golden West notes that a number of individuals on the Pine Ridge Reservation who have subscribed or switched to Western Wireless' service have returned to Golden West.

numerous T1's and other advanced services on the Pine Ridge Reservation. However, Western Wireless' proposal does not include advanced services.

D. Western Wireless' Remaining Arguments are Without Merit

Finally, Western Wireless' remaining public interest arguments, that designating Western Wireless as an ETC will facilitate competition and provide the benefits of mobility, are without merit. The public interest requirement in Section 214 is necessary precisely because Congress recognized that the benefits of competition may not outweigh the harm caused by an additional ETC in a rural area. In addition, "mobility" is not a supported service nor is it one of the universal service principles in Section 254. Thus, the promise of mobility cannot be the basis of a public interest showing.

V. WESTERN WIRELESS HAS COMPROMISED THE INTEGRITY OF THE COMMISSION'S PROCESSES

Western Wireless has attached to its Petition, as Appendix C, a "Commemorative Proclamation honoring the Tate Woglaka Service Agreement." This Proclamation, which was dated December 13, 2000, recites in relevant part that "Western Wireless and the Oglala Sioux Tribe have established a joint undertaking, subject to the jurisdiction of the Oglala Sioux Tribe, to develop telecommunications infrastructure on the Pine Ridge Indian Reservation capable of serving the universal service needs of the residents of the Reservation . . .". It concludes by stating that Western Wireless and the Oglala Sioux Tribe recognize this Commemorative Proclamation "before the witnesses identified herein to celebrate the significance of the Tate Woglaka Service Agreement to the Oglala Lakota people." The Commemorative Proclamation

was “duly signed by” Mikal Thomsen, the President of Western Wireless, and Garry Jarus, a Member of the Oglala Sioux Tribal Council. It was “duly witnessed by” then Chairman William E. Kennard and by a second person who appears to be current Chairman Michael Powell.

It is a well-established principle of administrative law that agency adjudications “must be attended, not only with every element of fairness but with the very appearance of complete fairness.”³⁰ An agency must not in some measure adjudge the facts or law of a particular case before hearing it.³¹ For example, individual Commissioners should not make speeches or engage in other activities that give the appearance that a case has been prejudged.³² Such conduct “may have the effect of entrenching a Commissioner in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record.”³³

At the time that the Tate Woglaka Service Agreement ceremony was held on December 13, 2000, Western Wireless knew, or should have known, that it would be filing the present Petition within the next month, and that it would be employing the Agreement as the primary basis for the ETC designation requested in the Petition. Because it knew that the Agreement would soon be coming before the Commission for adjudication and decision, Western Wireless should not have invited or encouraged the participation of any Commissioner at a ceremony to celebrate the signing of the Agreement. Western Wireless further should not have invited or encouraged any Commissioner to witness or sign a proclamation indicating that the Agreement was intended to serve “the universal service needs of the residents of the Reservation.” Finally,

³⁰ *Amos Treat & Co. v. SEC*, 306 F.2d 260, 267 (DC Cir. 1962).

³¹ *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 469 (2d Cir.), *cert. denied*, 361 U.S. 896 (1959).

³² *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 590 (DC Cir. 1970).

³³ *Id.*

Western Wireless should not have attached the Commemorative Proclamation to its Petition as a not-so-subtle message to the Commission's staff that the agency's former and present Chairmen have publicly recognized the alleged "significance" of the Agreement.

Golden West desires to make it absolutely clear that it is not claiming that Chairman Powell, former Chairman Kennard or the Oglala Sioux Tribe engaged in any improper or inappropriate activity. At the time of the Commemorative Proclamation ceremony and signing on December 13, 2000, they could not have been expected to know that Western Wireless would soon be bringing the Tate Woglaka Service Agreement before the Commission for a ruling. However, Western Wireless very clearly was planning or preparing the present Petition by December 13, 2000, and is fully responsible and culpable for tainting the fairness of this and any other Commission proceedings involving the alleged universal service aspects of the Agreement.

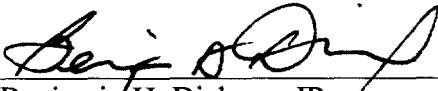
These actions by Western Wireless provide a further reason why the Commission should dismiss the Western Wireless petition, and allow South Dakota to exercise its jurisdiction over the designation of ETCs within all of the study areas of the state.

VI. CONCLUSION

Golden West respectfully requests that the Commission dismiss or deny the Western Wireless Petition for any of the aforementioned independent reasons. If the Commission determines not to dismiss or deny the Western Wireless Petition outright, Golden West requests a full evidentiary hearing before a Commission administrative law judge to address and resolve the many and material differences between the factual allegations in the Western Wireless Petition and these Comments, including those regarding the nature, quality and cost of the existing and proposed telecommunications services on the Reservation.

Respectfully submitted
**Golden West Telecommunications
Cooperative, Inc.**

By:


Benjamin H. Dickens, JR.

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Dated: March 12, 2001

ATTACHMENT A



United States
Department of
Agriculture

Rural Utilities Service
Washington, DC 20250-1500

Post-It® Fax Note		7671	Date	# of pages ▶
To	From			
Co/Di	2-947			
Phone	Golden West			
Fax #				

1 August 2000

Subject: South Dakota 508 – Pine Ridge Indian Reservation

TO: Mr. George Strandell
Interim General Manager
Golden West Telecom Co-op

FROM: Wayne A. Ahlgren, RUS GFR
Andre Boening, RUS GFR
P. Greg Fritts, RUS GFR
Wayne Jorewicz, RUS GFR

CC: Mr. Dwight Flatt, GWTC
Mr. Chris McLean, RUS
Ms. Roberta Purcell, RUS
Mr. Jerry Brent, RUS NWAT
Mr. Ken Chandler, RUS SWAT
Mr. Ken Kuchno, RUS EAT

During the week of June 24 – 30, 2000, the above listed Rural Utilities Service General Field Representative's were part of a team effort to review the telephone service penetration, by Golden West Telecom Co-op, on the Pine Ridge Indian Reservation. A GPS survey, locating all of the houses, had been conducted on the Reservation by the Golden West staff and a sample list to be verified was statistically arrived at by Mr. Randall M. Stuefen, Director of Research, Business Research Bureau at the University of South Dakota. Further details as to the number of houses surveyed and the number to be verified are detailed in the report by Mr. Stuefen which is attached to this report as well. A copy of the Field Activity Report by the GFR's is also attached for further details of the procedures taken.

The teams went out to the field and verified the status of the houses as to whether they were occupied, vacant or abandoned and whether they had a telephone drop to the residences or not. The teams also verified the status of the drop if it was in place. So it was noted and verified if the line was in service or if it just provided emergency service, (911 or 811).

The results of the sample verification are that 92.4% of the houses verified had a telephone service drop to the residence. The verification also resulted in a finding that of the occupied residences, 94.7% had drops to them. This supports the statistics that were previously reported by Golden West Telecom Co-op.

In addition to the field verifications conducted we also reviewed the records, maps, and customer service records of the Co-op covering the Pine Ridge Indian Reservation. Our findings from this review are that the Golden West Telecom is providing more than adequate service on the reservation and the remainder of their service areas. They have done an excellent job of area

coverage, as there are drops to most of the houses in the area. There are drops to houses that appear to have never been occupied. It appears that as the construction jobs are completed the Co-op places drops to all of the establishments along the construction route. The homes that do not have drops appear to be houses that were not present when the main route construction took place. The Co-op has recently modified it's refundable line extension deposit policy making it even easier and less costly for those establishments located away from the existing cable routes.

The Co-op has adopted the most recent industry standard design criteria where they are installing many digital loop carrier (DLC) systems and constructing a large amount of fiber optic cables. These design criteria are as required by the RUS standards as well. On the Reservation, the Co-op has placed many miles of fiber optic cables to complete a ring network which provides redundant routing for maintaining of service if there is a cut or disruption in the fiber optic cable anywhere along the ring routes. There still remain a few systems of subscriber carrier on the Reservation. In these areas the Co-op had construction jobs ready to eliminate these carrier systems by the year-end, weather permitting. All these design items are making ready for the deployment of broadband services. The Co-op has done extensive testing and design to utilize their current outside plant for this broadband deployment.

As a summary of this review of the availability of service on the Pine Ridge Indian Reservation, we found that not only does it match what most of the rest of the Country has available but that it exceeds what many areas currently have available. The Co-op has been following the guidelines of the Rural Utilities Service for almost fifty years and is doing a good job today. It appears that the lack of active telephone service penetration on the Pine Ridge Indian Reservation is caused by the poor economic conditions on the Reservation rather than the lack of facilities or cost of the services provided by Golden West Telecom Co-op. We all would be interested in helping in any way possible to better the economic situation as well.

#

ATTACHMENT B

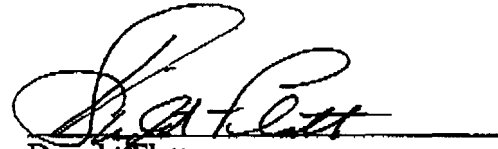
**AFFADVIT OF DWIGHT FLATT OF
GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE**

I, Dwight Flatt, upon oath and affirmation, hereby depose and state the following:

1. I am Manager of Member Services of Golden West Telecommunications Cooperative. ("Golden West");
2. I have reviewed the foregoing comments of Golden West opposing the application of Western Wireless Corporation for designation as an eligible telecommunications carrier for the Pine Ridge Reservation in South Dakota; and
3. I have verified that the statements therein are truthful, accurate and complete, to the best of my knowledge and ability.

I hereby declare under the penalty of perjury that the foregoing is true and correct. Executed on this 12th day of March, 2001.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dwight Flatt", is written over a horizontal line.

Dwight Flatt
Manager of Member Services

Golden West Telecommunications
Cooperative, Inc.

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that a copy of the foregoing **comments of Golden West Telecommunications Cooperative** concerning the Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota to be served by first class mail or hand delivery this 12th day of March, 2001, to the persons listed below.

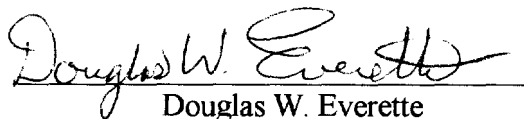
Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Sheryl Todd
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
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Douglas W. Everette